

NGFTS

National Guard Full-Time Support



HUMAN
RESOURCES
INFORMATION
LETTER



Oklahoma National Guard Human Resources Office

Joint Force Headquarters, Oklahoma National Guard
Oklahoma City, Oklahoma 73111-4398

No. 06-05
DATE: 27 June 2006

Butterbaugh vs. Department of Justice

Subject: Administrative Claims for Annual Leave as a Result of the Decision in *Butterbaugh vs. Department of Justice*.

Note: HR Information Letters 05-04 and 06-02 are rescinded

References:

5 U.S.C. 6323

Garcia v. Department of State, 2006 MSPB 29

Harper v. Department of Navy, 2006 MSPB 30

Uniformed Services Employment and Reemployment
Rights Act of 1994

Eligibility: Current, Separated and Retired National Guard (NG) Technicians

Effective Date: 7 June 2006

Use: To provide clarification and processing instructions concerning the case of *Butterbaugh vs. Department of Justice*

1. In accordance with Principal Deputy Under Secretary of Defense (Personnel & Readiness) memorandum, Subject: Administrative Claims for Leave as a Result of the Decision in *Butterbaugh v Department of Justice*, 336 F.3d 1332 (Fed. Cir. 2003) dated 7 June 2006, the following information and application procedures are provided:

- a. In *Butterbaugh v. Department of Justice*, and two subsequent *Butterbaugh*-related decisions issued by the Merit Systems Protection Board (MSPB) on February 27, 2006, *Garcia v. Department of State*, 2006 MSPB 29 and *Harper v. Department of Navy*, 2006 MSPB 30 (*Garcia/Harper*). Affected personnel are individuals who were simultaneously Federal employees and (1) Reservist, including Military Technicians, or (2) members of the National Guard who may have been improperly charged military leave.
- b. In *Butterbaugh*, the United States Court of Appeals for the Federal Circuit reversed the Office of Personnel Management's (OPM) interpretation of section 6323 of title 5, United States Code, and held that, at least since section 6323 was amended in 1980, it has been clear that Federal employees are required to take military leave only for those days they are required to work in their civilian jobs. Accordingly, agencies should have allowed 15 workdays of military leave for reserve training each year, instead of 15 calendar days, as was the practice in accordance with OPM's implementing regulation, until December 21, 2000, when section 6323 was again amended.
- c. As a result of the *Garcia/Harper* decisions, DoD will process administrative claims back to October 1, 1980, the effective date of the amendment to 5 U.S.C. 6323(a) interpreted by the Court in *Butterbaugh*. Therefore, current Federal employees, as well as those who have retired or separated from the Federal government, who: (1) were charged military leave, and (2) believe they have valid leave claims under *Butterbaugh* may file claims with the Federal agency that charged them leave.

- d. Those employees who have already filed claims and had their claims adjudicated, may submit amended claims that seek relief back to the first date they were improperly charged military leave after September 30, 1980.*
- e. As in all leave claims, the burden of proof is on the employee and it is not incumbent upon the Agency to research, collect, and provide employee with this proof.*

2. A technician making a claim must submit their claim in writing using Attachment 1 to the Joint Force Headquarters, ATTN: OKHR-ES (Butterbaugh vs. DOJ Claims), 3501 Military Circle, Oklahoma City, Oklahoma 73111-4398. Supporting documentation must be attached to the claim. Attach a copy of certified military orders and/or military leave and earnings statement (Military LES), and certification of military leave use, i.e. civilian leave and earnings statement (Civilian LES) indicating that the technician in one or more periods of active military duty that included non-workdays. Employees will be credited one day of annual leave for each non-workday occurring within a period of active duty for which they were charged military leave. A maximum of four days (32 hours) of annual leave may be credited for each fiscal year. If the technician was on an alternate work schedule for any claimed, the specific work schedule should be specified.

3. Attachment 2 is provided in order to help technicians obtain payroll verification of use of military leave on non-workdays. The burden of proof in these claims remains with the technician. However, Defense Finance and Accounting Service (DFAS) have offered to help obtain documents they may have on file. The technician should complete the form and fax it to (816) 926-5638.

3. Current, retired or separated technicians may submit a claim. Current technician's annual leave credited as a result of a technician's claim must be placed in a restored leave account. Technicians who have retired or separated will receive a lump-sum payment for any annual leave re-credited as a result of that claim, paid at the rate of pay the technician was earning at the time of their retirement or separation.

Your points of contact are LtCol Shirley Kyles at (405) 228-5578 or Capt James Baxter at (405) 228-5527.

KENNETH W. CALHOUN
COL, IN, OKARNG
Director, Human Resources



OKLAHOMA NATIONAL GUARD
JOINT FORCE HEADQUARTERS

3501 MILITARY CIRCLE
OKLAHOMA CITY, OKLAHOMA 73111-4398
(405) 228-5000 or DSN 628-5000

MEMORANDUM FOR HR-ES, 3501 Military Circle, Oklahoma City, OK 73111-4398

SUBJECT: Annual Leave Restoration Claim, Re: Butterbaugh v. DOJ Decision

From: (Please print or type clearly all required information, sign/date the application and attach documentation)

Name (First, MI. Last): _____ SSN: _____

Branch: ARNG ANG Status
Check One ☐ ☐ Current Tech: ☐ Retired: ☐ Separated: ☐

Branch/Status Info:

Address/City/St/Zip: _____

Phone (Hm/Wk/Cell): _____

E-Mail Address: _____

This is a claim for annual leave restoration based on the decision rendered in Butterbaugh v. DOJ. This claim complies with the guidance issued in accordance with Principal Deputy Under Secretary of Defense (Personnel & Readiness) memorandum, Subject: Administrative Claims for Leave as a Result of the Decision in Butterbaugh v. Department of Justice, 336 F.3d 1332 (Fed. Cir. 2003) dated 7 Jun 06.

Attachment 1

My claim is for the following dates, during which I was charged Military Leave during non-workdays:

[illegible]

I have attached the required documentation to support my claim:

1. Copy of certified military orders or military LES for the period/s indicated above.
2. Copy of civilian LES for the period/s of military duty indicating military leave used.

By signing and submitting this claim I declare, under penalty of perjury, that this is a truthful and accurate representation of my claim and that the attached document/s is/are exact, correct and complete copy/s of the original document/s in my possession.

Sincerely,

Signature: _____ Date: _____

This Section for HRO Use Only:	Date Received In HRO:		HRO Review By (Initials):		Date Forwarded to DFAS:	
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Attachment 1

REQUEST FOR DOCUMENTS IN SUPPORT OF BUTTERBAUGH V. DOJ

Name:
SSN:
Branch of Service: Air National Guard / Army National Guard (circle one)
DoD Component: Full Time National Guard Technician
Home Address: _____ _____ _____
Day Time Phone #:
Home Phone #:

1. Please forward to the above address any documents you have for the following period(s)

2. The documents will be used as evidence in the restoring of military leave as required for the processing of claims in the Butterbaugh v. DoJ decision.

Signature /Date

Attachment 2